



May 6, 2002

Mr. Sim W. Goodall
Police Legal Advisor
City of Arlington
P.O. Box 1065
Arlington, Texas 76004-1065

OR2002-2381

Dear Mr. Goodall:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 162366.

The City of Arlington (the "city") received two written requests for the surveillance tape from Ousley Junior High School that depicts the fatal shooting of a city police officer. This office previously ruled that this videotape was excepted from required public disclosure pursuant to section 552.119 of the Government Code. *See* Open Records Letter No. 2001-5516 (2001). In this instance, that ruling constitutes a "previous determination" for purposes of section 552.301 of the Government Code unless the law, facts, or circumstances on which Open Records Letter No. 2002-5516 was based have changed since the issuance of the ruling. *See* Open Records Decision No. 673 (2001). The requestors apparently believe that there has been a change in circumstance regarding the videotape because, you inform us, subsequent to the earlier ruling, the videotape was entered into evidence during an "internal discipline appeal hearing regarding the demotion" of another city police officer.

Section 552.119 of the Government Code requires the withholding of a photograph of a peace officer unless one of three exceptions applies. The three exceptions are: (1) the officer is under indictment or charged with an offense by information; (2) the officer is a party in a fire or police civil service hearing or a case in arbitration; or (3) the photograph is introduced as evidence in a judicial proceeding. In this instance, the "internal discipline appeal hearing" in which the videotape was introduced was not a "judicial proceeding" as it was not conducted before a "legally constituted court," *see* BLACK'S LAW DICTIONARY 441, 442 (abridged 6th ed. 1983), *see also* Webster's Collegiate Dictionary 633 (10th ed. 1994) (defining "judiciary" as "a system of courts of law"), nor was it subject to the Texas Rules of Civil Procedure or the Texas Rules of Evidence, which govern the practice of law

before Texas courts of law. *See Killingsworth v. Broyles*, 300 S.W.2d 164 (Tex. Civ. App.--Austin 1957, no writ) ("There is a distinction between judicial process and the administrative process, which, in general, precludes the application of the doctrine of res adjudicata to administrative proceedings. In judicial proceedings courts apply law to past facts which remain static and on the other hand administrative bodies are concerned with fluid facts and changing policies.") Accordingly, we conclude that there has been no change of circumstance regarding the videotape since Open Records Letter No. 2001-5516 was issued, and that the city may continue to rely on that ruling as a "previous determination" under section 552.301 of the Government Code.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

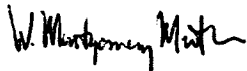
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



W. Montgomery Meitler
Assistant Attorney General
Open Records Division

WMM/RWP/sdk

Ref: ID# 162366

Enc: Submitted videotape

c: Mr. Jason Trahan
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